

REMARKS

The Office Action withdrew newly submitted claims 60-89 as being directed to a non-elected invention. Accordingly, claims 60-89 are cancelled herein without prejudice as being directed to a non-elected invention. A divisional application may be filed later to prosecute these cancelled claims. The Office Action rejected previously presented claims 22-38.

Claim 22 is amended herein. Claims 35 and 36 are cancelled herein. New claims 90-103 are added herein. Therefore, claims 22-34, 37-38, and 90-103 are currently pending. No new matter was added.

Claim 22 was rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0164373 A1 to Koester et al. (hereinafter "Koester"). Applicants respectfully submit that claim 22, as currently amended, is allowable over the references of record.

Claim 22, as currently amended, specifically recites:

... wherein the first crystalline layer and the substrate have a first lattice mismatch;
... wherein the second crystalline layer and first crystalline layer have a second lattice mismatch, the second lattice mismatch being greater than the first lattice mismatch;
... wherein the top epitaxial layer and the second crystalline layer have a third lattice mismatch, the third lattice mismatch being greater than the second lattice mismatch.

Applicants respectfully submit that the references of record neither teach nor suggest three epitaxial layers having the first, second, and third lattice mismatch relationship provided by embodiments of Applicants' invention. Applicants therefore respectfully conclude that claim 22

is patentably distinct from the references of record. Since rejected claims 22-34 and 37-38 depend from claim 22, these claims are allowable for at least the reasons with respect to claim 22.

New claim 90 is added herein. Claim 90 recites limitations similar to claim 22, except claim 90 does not include the limitation "the second lattice mismatch being greater than the first lattice mismatch," which is specifically recited in claim 22. Furthermore, claim 90 specifically recites: "the third lattice mismatch being greater than the first and second lattice mismatch."

Applicants respectfully submit that the references of record neither teach nor suggest the limitations recited in Claim 90. Applicants therefore respectfully conclude that claim 90 is patentably distinct from the references of record. Since new claims 91-103 depend from claim 90, these claims are allowable for at least the reasons with respect to claim 90.

In view of the above, Applicants respectfully submit that the application is in condition for allowance and request that the Examiner pass the case to issuance. If the Examiner should have any questions, Applicants request that the Examiner contact Applicants' attorney at the address below. In the event that the enclosed fees are insufficient, please charge the same, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,



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